

## REMARKS

The Office Action stated that "This application contains claims directed to the following patentably distinct inventions or groups involving an oral pharmaceutical dosage formulation comprising pharmaceutical superdisintegrants. Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-95; drawn to a composition comprising forms of azithromycin
- II. Claims 96-123 drawn to a method of preparing azithromycin formulations."

*Office Action at page 2.*

Applicants would like to point out that claims 1-123 have been/are being canceled and new claims 124-143 are introduced to emphasize that the crystalline form of azithromycin is substantially pure Form F. Applicants respectfully submit that new claims 124-143 belong to group I claims and no group II claims have been introduced.

Therefore, the present Amendment would satisfy the restriction requirement of the March 11, 2005 Office Action.

Support for new claim 124 can be found, *inter alia*, in the original claim 8. Supports for new claim 125-133 can be found, *inter alia*, on page 2, lines 14-21 of the original specification. Support for new claim 134 can be found, *inter alia*, in the original claim 13. Support for new claim 135 can be found, *inter alia*, in the original claim 15. Support for new claim 136 can be found, *inter alia*, in the original claim 17. Support for new claim 137 can be found, *inter alia*, in the original claim 19. Support for new claim 138 can be found, *inter alia*, in the original claim 21. Support for new claim 139 can be found, *inter alia*, in the original claim 23. Support for new claim 140 can be found, *inter alia*, in the original claim 25. Support for new claim 141 can be found, *inter alia*, in the original claim 27. Support for new claim 142 can be found, *inter alia*, in the original claim 29. Support for new claim 143 can be found, *inter alia*, in the original claim 30.

Therefore, the present Amendment is fully supported by the original specification and does not raise any issue of new matter. Accordingly, entry of the present Amendment is respectfully requested. Upon entry of the present Amendment, claims 124-143 will be under examination.

Applicants would like to direct the Examiner's attention to a reissue application for U.S. Patent No. 6,365,574 B2 filed on April 2, 2004 ("the '574 patent reissue application") by Claude Singer, et al. Applicants note that the '574 patent reissue application allegedly contains claims that have been copied, at least in part, from US 2003/0162730 (claims 3, 30, 31, 97, 123) and US 2003/165563 (claims 3, 47, 48, 56, 83). It is also noted that the specification of US 2003/0162730 corresponds to that of the present application.

Applicants believe that copied claims 3, 30, 31, 97 and 123 from US 2003/0162730 should not be entered in the '574 reissue application because these copied claims do not satisfy the requirements of 35 U.S.C. §135(b), which states that "A claim which is the same as, or for the same or substantially the same subject matter as, a claim of an application published under section 122(b) of this title may be made in an application filed after the application is published only if the claim is made before 1 year after the date on which the application is published."

The PCT counterpart of the present application designated the United States and was published on November 28, 2002. The '574 reissue application was filed on April 2, 2004, more than one year from the publication date of the PCT counterpart of the present application. Moreover, these copied claims are not supported by the original specification of the '574 reissue application and do not satisfy the requirement of 35 U.S.C. §112, description. Therefore, the copied claims 3, 30, 31, 97 and 123 from US 2003/0162730 should be entered in the '574 reissue application.

Applicants respectfully request an early examination of the present application and/or an interview with the Examiner to discuss the currently pending claims in view of the '574 reissue application and any other issues that the Examiner may raise.

CONCLUSION

In view of the claim amendments and remarks, further and favorable consideration of claims 124-143 is respectfully requested. The Examiner is invited to contact the undersigned if he wishes to discuss details of the present Amendment.

Respectfully submitted,

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